



Elizabeth Bourbon
Senior Managing Counsel

November 2, 2017

VIA EMAIL AND OVERNIGHT MAIL

Andrew Helmlinger
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

**Re: Valero Benicia Refinery, Benicia, California
Confidential Business Information Substantiation**

Dear Mr. Helmlinger:

This correspondence is sent in response to your September 15, 2017 letter to Donald Wilson, Refinery Manager, requesting that Valero Refining Company–California (“Valero”) substantiate its confidentiality claims for confidential business information (“CBI”) for certain records in the U.S. Environmental Protection Agency’s (“EPA’s”) possession provided by Valero on August 25, 2017 in response to EPA’s Request for Information (“RFI”) dated July 27, 2017. In its September 15, 2017 correspondence, EPA asked Valero to substantiate its CBI claims for certain drawings, diagrams, procedures, and other documents related to the May 5, 2017 Pacific Gas and Electric Company (“PG&E”) power outage and the total loss of electrical power to the Valero Benicia Refinery (“Refinery”), which resulted in an emergency shutdown and associated flaring. The production contains confidential business information (“CBI”) eligible for exemption from public disclosure under the Freedom of Information Act (“FOIA”). These confidential materials (collectively, “CBI Materials”) are exempt from disclosure under Exemption 4 of FOIA and Valero requests that EPA treat these documents as confidential. 5 U.S.C. § 552(b)(4).

To facilitate EPA’s review, Valero is providing a Bates-labeled version of its August 25, 2017 production, which will be transmitted copied to a compact disc via Overnight Mail. The Bates-labeled documents include the attachment numbers identified in the original August 25, 2017 production for ease of reference.

A. CBI Material Categories

For ease of review, we have categorized the types of confidential documents and information produced to EPA during the course of the agency’s inspection into five (5) categories: Technical Drawings, Process Descriptions, Supporting Data for Emissions Calculations, Operating Procedures, and Process Safety Management (“PSM”) and Risk Management Program (“RMP”). Each category is described below:



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(1) **Technical Drawings**

The production contains the following Piping and Instrumentation Diagrams (“P&IDs”) and Process Flow Diagrams:

- Refinery Flare Gas Recovery System P&ID, Bates-labeled VAL-EPA-000018;
- Simplified Flow Diagram of Sulfur Recovery Unit/Tail Gas Cleanup Unit, Bates-labeled VAL-EPA-000019;
- Crude Tower SV-106 Process Flow Diagram, Bates-labeled VAL-EPA-000179;
- Coker Scrubber SV-903 Process Flow Diagram, Bates-labeled VAL-EPA-000186.

(2) **Process Descriptions**

The production contains several documents with narrative descriptions of refinery equipment and processes, collectively referred to as “Process Descriptions.” The Crude Tower SV-106 Release to Atmosphere PHA, Bates-labeled VAL-EPA-000178 through VAL-EPA-000182, and the Coker Scrubber SV-903 Release to Atmosphere PHA, Bates-labeled VAL-EPA-000185 through VAL-EPA-000190 both describe process variables, operating parameters, and prevention strategies with regard to specific refinery equipment.

A list of process units with accompanying descriptions, Bates-labeled VAL-EPA-000801 through VAL-EPA-000803, details the name and function of numerous process units at the Refinery, and includes specific and unique details regarding how these units function together in the process.

In correspondence dated May 26, 2017, in response to Solano County’s request for information, Valero describes process information regarding various units within the refinery and their function, including the Cogeneration Unit and the flare systems. This correspondence is Bates-labeled VAL-EPA-000037 through VAL-EPA-000040.

(3) **Supporting Data for Emissions Calculations**

Valero requested a Breakdown Exemption for emissions excesses from the Bay Area Air Quality Management District (“BAAQMD”) in a letter dated June 2, 2017. As part of this request, Valero included supporting data to demonstrate its eligibility for an exemption



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under BAAQMD Rule 1-208. This supporting data is Bates-labeled VAL-EPA-00051 through VAL-EPA-000171.

(4) Operating Procedures

The production contains numerous internally-developed operating procedures, including:

- Flare System Operating Procedures, Bates-labeled VAL-EPA-000191 through VAL-EPA-000306; and
- Unit Emergency Power Failure Procedures, Bates-labeled VAL-EPA-000704 through VAL-EPA-000800.

(5) PSM / RMP Program

Finally, the production contains the Refinery's PSM/RMP Program, Bates-labeled VAL-EPA-0003007 through VAL-EPA-000528, which includes company practices and procedures that enable Valero's compliance with PSM/RMP requirements.

B. Responses to EPA CBI Materials Inquiries

In support of the claim of confidentiality, below are Valero's responses to EPA's specific questions:

1. **For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.**

The PSM / RMP Program should be treated as confidential permanently. The remaining four categories of information should be treated as confidential permanently, or until the Refinery is no longer operating.

2. **Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?**

Category 1: The Technical Drawings contain detailed, trade secret technical design and process information unique to units within the Refinery. This information should not be disclosed to the public as long as the refinery is operating. If this confidential information



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is disseminated, these drawings could be used to replicate the Refinery's process units, causing substantial competitive injury to Valero.

Category 2: The Process Descriptions identified above outline proprietary information regarding specific design and operating parameters for certain units within the Refinery. Taken together, they describe unique Refinery unit configurations and design determinations that are highly proprietary. Disclosing this information would provide competitors with access to sensitive operational information that would allow them to gain an advantage, causing Valero substantial commercial injury. As long as the Refinery is operating, this information should be maintained as confidential.

Category 3: The Supporting Data for Emissions contains information that could be used to reverse-engineer and back-calculate proprietary data regarding unit flow contribution and throughputs within the Refinery. Short of the refinery ceasing to operate, Valero currently does not foresee a scenario in which this information would grow stale.

Category 4: The Operating Procedures described above contain confidential, internal guidance regarding specific operating and maintaining equipment at the Refinery. These procedures took considerable resources and expertise to develop. As long as the Refinery is operating, these documents will provide valuable technical design and operating information that would provide competitors an advantage if disclosed.

Category 5: The PSM / RMP Program contains internal company practices, policies, and procedures that reflect Valero's unique effort to implement a robust PSM/RMP program at the Refinery. Even in the event Valero no longer owns and operates the Refinery in the future, this information will continue to provide proprietary company information about Valero's company-wide approach to PSM/RMP compliance, the disclosure of which would provide Valero's competitors with a significant competitive advantage.

3. **What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?**

Valero protects the secrecy of the CBI Materials and does not make them available to the general public. Further, the CBI Materials are made available only to relevant employees within the Company. Where these documents are maintained electronically, they reside on secure Valero servers, and only employees with environmental-related work can access the electronic file folders where these documents reside. Additionally, any hard copy documents are maintained onsite in a secure location, accessible only to the



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Refinery Environmental Department via electronic key card. Hard copy documents are also labeled confidential when appropriate. The Refinery is subject to security measures, including perimeter fencing, a manned security gate, video surveillance, key card access, and confidentiality agreements with employees, vendors, and customers, among other measures. When confidential information is provided to a governmental body or party bound by a non-disclosure agreement, Valero identifies such information as confidential.

4. **Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.**

The material described above is not publicly available on the Internet or other publicly available databases and is not of the kind that would customarily be released to the public.

5. **Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?**

No copies of the information described above are available to the public, and none of this information is of the kind that would be customarily released. Valero guards the secrecy of this information carefully.

6. **Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.**

Valero is not aware of any previous confidentiality determinations regarding the CBI Materials.

7. **For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?**

Category 1: The Technical Drawings provide specific trade secret technical design and process information about the Refinery. The P&ID identifies the technical design basis for the Refinery Flare Gas Recovery System. Similarly, the Process Flow Diagrams provide information about the technical design basis for the Sulfur Recovery Unit and



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Tail Gas Cleanup Unit, the Crude Tower SV-106, and the Coker Scrubber SV-903. These drawings represent the end product of substantial time, money, and effort. They were developed by Valero and/or retained contractors at great expense. Disclosing this information would provide Valero's competitors with information that would assist them in designing, engineering, and operating similar units, without investing the same effort and resources. Disclosure would subject Valero to substantial commercial injury.

Category 2: The Process Descriptions provide confidential information in a narrative form about the Refinery's unique operations. The list and accompanying descriptions of the refinery process units outline proprietary details about Valero's operations, including the process functions of each of the units and feed materials. Taken together, they describe unique Refinery unit configurations and design determinations. Similarly, correspondence to Solano County provides process information about various units within the refinery and their function, including the Cogeneration Unit and the flare systems.

The PHAs contain detailed information about the Crude Tower SV-106 and the Coker Scrubber SV-903. Specifically, these documents describe process variables, operating parameters, and prevention strategies with regard to specific refinery equipment. As the PHAs consider a wide range of potential hazards implicated by the design and operation of specific equipment within applicable units, they necessarily involve substantial time, money, and resources to develop. As a result, these documents contain commercially valuable information about the design and safe operation of the Refinery. A competitor could use this information to inform the design, construction, and operation of a similar facility, harming Valero's competitive position.

Category 3: The Supporting Data for Emissions contains detailed information regarding the concentration and mass underlying Refinery emissions calculations, which, if released, could allow a competitor to determine Refinery unit throughputs and unit flow contributions through back-calculation. While this information was necessary to justify Benicia's request for a Breakdown Exemption under California law, it is not necessary to determine the identity, amount, frequency, or concentration of air emissions under federal regulations, and is therefore not emission data. 40 C.F.R. § 2.301(a)(2)(i). Using this data, a competitor could determine process inputs and other important operating information, obtaining a significant competitive advantage over Valero without expending time or resources.

Category 4: The Operating Procedures contain internal guidance regarding operating and maintaining equipment at the Refinery. These documents include valuable technical design and operation information that would provide competitors an advantage if



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disclosed. Additionally, these procedures are the end product of many years of effort and significant resources, and are the result of the contribution of numerous subject matter experts within Valero. Disclosing this information would allow competitors to glean proprietary information about refinery design and operations, and would provide a shortcut to the development of procedures required by state and federal law at similar facilities.

Category 5: Dissemination of Valero's robust PSM / RMP Program would provide competitors with a significant advantage in the refining or chemical industries. Specifically, as a member of the California Occupational Safety and Health Administration's Volunteer Protection Program, Valero has invested significant time, effort, and resources in developing its plans and policies for the Refinery. As recognized by the state of California, this program goes above and beyond what is required by industry. This Program also reflects company-wide contributions and expertise that are the result of Valero's commitment to implementing a robust PSM / RMP program at all of its refineries. This information provides unique insights about the implementation of this program at the Refinery and also sets out Valero's proprietary methods of organization and operating philosophies.

8. **Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.**

The CBI Materials were submitted on a mandatory basis. EPA requested this information in its July 27, 2017 RFI, invoking its authority under Section 114 of the Clean Air Act. 42 U.S.C. § 7414. Valero responded to this RFI as required by law.

9. **Whether you assert provision of the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.**

Disclosure of the information would provide a disincentive for companies like Valero to cooperate with EPA during EPA's response activities and investigations. Valero understands that EPA may require confidential information regarding the design and operation of processes like the Flare Recovery System at the Refinery in order to conduct a thorough review of flaring incidents. A company's willingness to assist in EPA information-gathering associated with a response action or subsequent investigation should not be penalized by the release of the CBI that it shared with EPA in response to the agency's request.



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If EPA does not protect the CBI that companies provide to EPA when cooperating with the agency's investigative activities, companies will necessarily be reluctant to provide that information to the agency on a voluntary basis. Further, when the disclosure is mandatory, companies will have an incentive to provide as little information as possible. This could inhibit EPA's information-gathering work. Protection of the CBI that is gathered by EPA during the course of response activities or an investigation will encourage cooperation and information-sharing during those activities.

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

As discussed above, several of the documents included in the August 25, 2017 production contain commercially valuable design, configuration and operation information used in the refining process. These documents are the end product of substantial time, money, and effort. These documents include:

- Technical Drawings, including:
 - Refinery Flare Gas Recovery System P&ID, Bates-labeled VAL-EPA-000018;
 - Simplified Flow Diagram of Sulfur Recovery Unit/Tail Gas Cleanup Unit, Bates-labeled VAL-EPA-000019;
 - Crude Tower SV-106 Process Flow Diagram, Bates-labeled VAL-EPA-000179; and
 - Coker Scrubber SV-903 Process Flow Diagram, Bates-labeled VAL-EPA-000186.
- Process Descriptions, including:
 - Crude Tower SV-106 Release to Atmosphere PHA, Bates-labeled VAL-EPA-000178 through VAL-EPA-000182;
 - Coker Scrubber SV-903 Release to Atmosphere PHA, Bates-labeled VAL-EPA-000185 through VAL-EPA-000190;
 - A list of process units with accompanying descriptions, Bates-labeled VAL-EPA-000801 through VAL-EPA-000803;



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- Correspondence dated May 26, 2017 to Solano County in response to the County's May 22, 2017 Information Request, Bates-labeled VAL-EPA-000037 through VAL-EPA-000040; and
 - Supporting data for emissions calculations, Bates-labeled VAL-EPA-00051 through VAL-EPA-000171.
- Operating Procedures, including:
 - Flare System Operating Procedures, Bates-labeled VAL-EPA-000191 through VAL-EPA-000306; and
 - Unit Emergency Power Failure Procedures, Bates-labeled VAL-EPA-000704 through VAL-EPA-000800.

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

As discussed above, the Supporting Data for Emissions Calculations, Bates-labeled VAL-EPA-00051 through VAL-EPA-000171, is not necessary to determine the identity, amount, frequency, or concentration of air emissions under federal regulations, and is therefore not emission data. 40 C.F.R. § 2.301(a)(2)(i).

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For the above reasons, Valero requests confidential treatment of the documents described above. If you have any questions, please do not hesitate to contact me at (210) 345-4650.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Elizabeth Bourbon'.

Elizabeth Bourbon
Senior Managing Counsel

Enclosures via Overnight Mail